

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10826 of 1994

to

SPECIAL CIVIL APPLICATION No 10830 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHUVVA KELAVANI SAHAYAK SAMAJ

Versus

RASIKLAL K JOSHI

Appearance:

MR N.D. NANAVATI for Mr. NP NANAVATI for Petitioners
MR MB GANDHI for Respondent No. 1 and 2.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 18/07/96

ORAL JUDGEMENT

The petitioners have challenged the common judgement and order dated March 28, 1994 passed by the Gujarat Primary Education Tribunal in applications Nos. 72, 73, 74, 75 and 107 of 1992 by which the Tribunal declared that the termination of the services of these respondents teachers from 30.11.1989 by the petitioner school management was illegal and that they were entitled

to be reinstated in service with all consequential benefits.

The learned counsel appearing for the petitioners in this group of petitions contended that the provisions of Section 40B(1) of the Bombay Primary Education Act, 1947 were not attracted in the instant case because the termination of service of the respondents teachers in this group of petitions was not by way of any penalty. It was argued that sub-Section (3) of Section 40B of the Act indicated that the words "otherwise terminated" occurring in Section 40B(1)(a) had a reference to a penal termination only and termination simpliciter was not included in that expression, as a result of which, in respect of termination simpliciter no show cause notice was necessary to be issued under Section 40B(1)(a) of the said Act. It was further argued that the services of these respondents teachers were terminated since they did not possess the requisite qualifications. Reliance was placed by the learned counsel on the decision of a Single Judge of this Court in Special Civil Application No. 2472 of 1995 decided on 7.8.1995 in support of his contention that it was not necessary to follow the procedure prescribed by Section 40B of the said Act which was similar to the provisions 14 of the Gujarat Higher Secondary Education Act, 1972. It was submitted that in the Letters Patent Appeal being L.P.A. No. 905 of 1995, the Division Bench had granted interim relief against the operation of the judgement and order dated 7.8.1995 passed in Special Civil Application No. 2472 of 1995 but thereafter the Hon'ble Supreme Court had in SLP No. 26337 of 1995 ordered notice to issue and granted ad-interim stay of the operation of the order of the Division Bench. It is, however, stated that those proceedings are no longer pending since the matter was settled.

Admittedly, no show cause notice was issued to these respondents teachers before terminating their services and this is a ground on which the Tribunal had allowed their applications and set aside the orders of termination of their service. Section 40B(1)(a) provides that no teacher of a recognised private primary school shall be dismissed or removed or reduced in rank nor his service be otherwise terminated until he has been given a show cause notice against the action proposed to be taken in regard to him and the action proposed has been approved in writing by the administrative officer concerned. This safeguard is not available to a teacher who is appointed temporarily or on a leave vacancy for a

period of less than a year. Admittedly, the respondents teachers had served for a number of years and they were not temporary teachers. Sub-section (3) of Section 40B provides that no penalty (being the penalty other than that referred to in sub-section (1)) shall be imposed on a teacher of the private primary school unless such teacher has been given a reasonable opportunity of being heard. On the basis of this sub-section (3) it was contended that the words "otherwise terminated" occurring in Section 40B(1)(a) of the said Act would have reference to termination by way of penalty and therefore a show cause notice was not required to be given in cases of termination simpliciter.

It will be noted that the area of operation of sub-section (3) of Section 40B is entirely different from the area covered by Section 40B(1)(a) of the Act. All that the sub-section (3) enacts is that even in case of any penalty other than the one which is already covered under sub-section (1)(a) a reasonable opportunity of hearing is required to be given to a teacher. Therefore, in cases, for instance, of imposing penalty of stoppage of increment which will not fall under Section 40B(1)(a), a reasonable opportunity of hearing would nonetheless be necessary. This provision can never be construed so as to lead to any inference that the expression "be otherwise terminated" in Section 40B(1)(a) was confined only to penal terminations. The provisions of Section 40B(1)(a) of the Act cover specified categories of the action proposed against a teacher and these are: (1) dismissal (2) removal (3) reduction in rank and (4) termination for other reasons. The action of termination of service of an employee who is not a temporary employee has very serious consequence and therefore the Legislature thought it wise to include even such cases of termination other than penal termination in the categories for which show cause notice against the proposed action was required to be given. If the termination is penal it would be covered under the expression "dismissal" or "removal" and in that event it was not necessary to add the words "be otherwise terminated". It necessarily follows that these words were intended to cover even cases of termination simpliciter. It is therefore clear that the procedure under Section 40B(1)(a)(i) and (ii) was required to be followed in cases of these respondents teachers as rightly held by the Tribunal. In context of a similar provision of Section 36(1) of the Gujarat Secondary Education Act, 1972 it has been held by this Court following the previous judgement, in Special Civil Application No. 3271 of 1992 that the words "otherwise

"terminated" occurring in Section 36(1) of that Act are wide enough to cover even the cases of a situation arising out of closure of a registered school and the case of a primary teacher whose services are terminated simpliciter was also covered by the provisions of Section 40B of the Bombay Primary Education Act, 1947.

As regards the contention that these teachers were not having the requisite qualifications it is clear that no such contention was ever raised before the Tribunal and the petitioner management cannot be allowed to raise that question for the first time in this petition. Even if the question of qualification was involved and was a ground for issuing orders of termination, it was incumbent upon the management to have followed the provisions of Section 40B(1)(a) of the said Act.

Under these circumstances, there is no substance in any of these petitions and all these petitions are rejected with no order as to costs.

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